

Remarks/Arguments:

This is a reply to the office action of June 22.

Claims 1 - 6 stand rejected as obvious over Hivner in view of admitted prior art.

Claim 7 stands rejected as obvious over Hivner in view of Forrester '006 and admitted prior art.

The independent claims have been amended above to better distinguish the invention from the prior art.

The present invention is directed to fiber optic drop wire, which was not in use at the time Hivner filed his application. At that time, the only drop wires used were copper pair wires. These drop wires could exist the terminal at any number of different locations and could take virtually any direction path, independent of the path of other drop wires leaving the terminal. One copper pair drop wire could exit the terminal, proceed to a pole and continue past the pole to a point along the messenger-supported cable, and then be deviated away from the cable to a subscriber location. Another drop wire would exit the same terminal, proceed to the pole, and then deviate to another subscriber at the pole. A third drop wire could proceed directly from the terminal to a subscriber location. These three runs would be independent, with no initial conformity required by the terminal configuration, location or other characteristic.

In contrast, fiber optic drop wires are arranged in a specific manner at a terminal or closure, and proceed from it in predetermined directions. A specific quantity exist the closure in one direction, while another quantity exit in the opposite direction, irrespective of the subscriber locations. This restriction inevitably requires in-line reversal of the route of some drop wires, thus demanding bend radius protection.

Moreover, the bend radius protector used must accommodate multiple wraps of drop

wire in a manner that maintains the organization of the wires, and makes them individually accessible. Hivner did not anticipate these requirements, and could not have been expected to do so, considering the state of the art at the time he made his invention.

The fiber optic drop wire of this application is not just a smaller version of fiber optic cable. It is specially designed to withstand damaging conditions that may be encountered more often on private property than on established rights of way. As described in the specification, the drop wire includes two tensile members with an optical fiber between them, the tensile members preferably being of a greater diameter, to protect the fiber from damage. A limitation to this effect has been added to each of the independent claims.

In rejecting the claims, the examiner treated applicant's disclosure as an admission which was used to reject the claims of the same application. We respectfully submit that applicant's disclosure does not rise to the level of admitted prior art.

Claim 7 recites a method in which both a cable closure and a pair of bend radius protectors are suspended from an optical cable. In rejecting this claim, the examiner reasoned that "It would have been obvious to one of ordinary skill in the art to combine the teachings of the admission of prior art by the applicant, Hivner and Forrester et al by [1] placing one bend radius protector closer to the pole than the other protector and also [2] modifying the routing of the cable within the invention, as well as [3] providing a manner by which a splice closure can be installed at a surplus loop installation location." [Numerals added.]

Discussion of the work of others may be treated as admitted prior art. "However," MPEP 2129 observes, "even if labeled as 'prior art,' the work of the same inventive entity may not be considered prior art against the claims unless it falls under one of the

statutory categories. *Id.*; see also *Reading & Bates Construction Co. v. Baker Energy Resources Corp.*, 748 F.2d 645, 650, 223 USPQ 1168, 1172 (Fed. Cir. 1984). ('[W]here the inventor continues to improve upon his own work product, his foundational work product should not, without a statutory basis, be treated as prior art solely because he admits knowledge of his own work. It is common sense that an inventor, regardless of an admission, has knowledge of his own work.').” We submit that the treatment of applicant’s observations ought not in this case to have been used as an admission against his own claims.

In any event, the reasoning does not address all the limitations of claim 7:

[A] suspending the cable closure from the fiber optic cable in the vicinity of a selected pole,

[B] suspending from the fiber optic cable a pair of bend radius protectors, each having a grooved periphery of a radius at least as great as the minimum drop wire bend radius, the bend radius protectors straddling the cable closure so that one bend radius protector is closer to the selected pole than the cable closure, and one is further away,

[C] passing the fiber optic drop wire from the cable closure around the periphery of the bend radius protector closer to the pole, then around the periphery of the bend radius protector further away, then back toward the selected pole, and

[D] clamping the fiber optic drop wire to the selected pole.

[Subparagraph indicators added.]

The prior art does not show these elements in combination, and a *prima facie* case of obviousness has not been made out. For these reasons, and considering the changes that have been made to the claims, we believe this application is now in condition for allowance.

Respectfully submitted,

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